APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 01-1328, 01-2399

THEOPHILUS GREEN,

Plaintiff-Appellant,

v.

MARY ANN BENDEN, et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Northern District of Illinois, Eastern Division. No. 99 C 6002--Wayne R. Andersen, Judge.
Submitted December 14, 2001--Decided February 21, 2002

Before Fairchild, Diane P. Wood, and Williams, Circuit Judges.

Williams, Circuit Judge.

TheophilusGreen sued under 42 U.S.C. secs. 1981and 1983, alleging that the Illinois Department of Professional Regulation("DPR") and two DPR attorneys (collectively, the "Illinois Defendants") violated his rights to due process and equal protection in bringing administrative disciplinary proceedings against him to suspend his clinical psychologist's

license. Dr. Green also asserted a claim under 42 U.S.C. sec. 1985 for civil conspiracy against the DPR and Health Care Service Corporation ("HCSC"). The district court dismissed some of Dr. Green's claims and granted summary judgment to the defendants on the remaining claims. Dr. Green appeals, and we affirm in part and vacate in part.

I. Factual Background

Dr. Green, an African American, received a degree in clinical psychology in 1982 and from then until 1989 practiced clinical psychology in Illinois without a license. In 1990 Dr. Green passed the Illinois clinical psychologist's examination and obtained a license.

In 1996 the DPR instituted disciplinary proceedings against Dr. Green, alleging that he had violated Illinois law by practicing clinical psychology without a license and by making false statements on another psychologist's licensing application forms. After a hearing the DPR's disciplinary board suspended Dr. Green's license for a minimum of two years and imposed various conditions on its reinstatement. The disciplinary board also barred Dr. Green from supervising prospective licensees as long as his license was suspended and fined him $8,000. Thereafter, HCSC, which required psychologists to be licensed as a prerequisite to reimbursement, ceased all payments to Dr. Green for services that he rendered to its insureds.

Dr. Green sought administrative review in state court; the Circuit Court of Cook County, Illinois, upheld the suspension but vacated the fine. Dr. Green appealed to the Illinois Appellate Court.

Dr. Green's state-court appeal was still pending when in September 1999 he filed this lawsuit. Dr. Green alleged that the

Illinois Defendants violated his rights to due process and equal protection by targeting him for disciplinary action based on his race and in retaliation for his testimony in another disciplinary hearing that was favorable to the psychologist under investigation. Dr. Green further alleged that HCSC and the DPR had conspired "to deny [him] the opportunity to . . . practice his profession" based on his race because HCSC (1) refused to reimburse him for services he rendered to its insureds, and (2) provided his patients' confidential medical reports and other unspecified information to the Federal Bureau of Investigation in response to grand jury subpoenas. Dr. Green also asserted claims against the Wisconsin Department of Professional Regulation and certain of its representatives, but those claims are not a part of this appeal. Dr. Green sought a declaration that the DPR disciplinary proceedings were illegal and an award of damages. In November 1999 Dr. Green also sought a preliminary injunction ordering the DPR to restore his license.

II. The District Court Proceedings

In April 2000 the district court denied Dr. Green's request for injunctive relief. The court concluded that Dr. Green had not demonstrated a likelihood of success on the merits because he presented no evidence that the DPR proceedings were racially motivated.

In September the court entered orders dismissing some of Dr. Green's claims and granting summary judgment to the defendants on the remaining claims. Specifically, the court dismissed the entire suit against the DPR and its attorneys in their official capacities, concluding that they were immune under the Eleventh Amendment of the United States Constitution. The court granted summary judgment in favor of HCSC as to the civil conspiracy claim, concluding that Dr. Green

presented no evidence that HCSC's actions were motivated by racial animus. Finally, the court granted summary judgment to the DPR attorneys in their individual capacities, a ruling that Dr. Green does not challenge on appeal.

In January 2001 the district court entered a partial judgment under Federal Rule of Civil Procedure 54(b) as to HCSC. Dr. Green timely filed a notice of appeal, which was assigned docket number 01-1328. In June 2001 the district court entered a partial judgment under Rule 54(b) as to the Illinois Defendants. Dr. Green timely filed a notice of appeal, which was assigned docket number 01-2399. We consolidated the appeals on our own motion.

III. Analysis

On appeal Dr. Green challenges the district court's denial of injunctive relief and the grant of summary judgment as to his civil conspiracy claim. Dr. Green also contends that the district court erred in failing to enter a default judgment in favor of his co-plaintiffs. At the outset, we dispense with Dr. Green's default judgment argument. Any claims that Dr. Green's co-plaintiffs, Associated Psychological Services and Psychological Solutions, P.C., might otherwise have are not before us. The co-plaintiffs were unrepresented before the district court, which never decided any of their claims. Additionally, the co- plaintiffs are unrepresented before this court and have not filed notices of appeal on their own behalf. See Lewis v. Lenc-Smith Mfg. Co., 784 F.2d 829, 830-31(7th Cir. 1986). We therefore limit our review to Dr. Green's remaining arguments on appeal.

A. Civil Conspiracy

Dr. Green's argument is difficult to grasp, but he appears to contend that the district court erred in granting summary judgment by ignoring evidence that establishes the existence of a conspiracy between HCSC and the DPR. First, Dr. Green

highlights two affidavits--one from Allen Piening, the psychologist in whose disciplinary hearing Dr. Green testified, and one from J. Chris Goodman, Dr. Piening's attorney. Dr. Green argues that these affidavits show that the DPR targeted him for prosecution based on his race. Second, Dr. Green claims that he presented evidence that HCSC breached an unspecified legal duty to investigate the DPR's charges and assist him in establishing that he was immune from the disciplinary proceedings.

We first note that the district court relied on documents extraneous to the complaint but nonetheless analyzed the conspiracy claim in the context of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Thus, the court effectively converted HCSC's motion to dismiss into one for summary judgment, see Fed. R. Civ. P. 12(c), but the record is not clear as to whether the court gave Dr. Green the requisite notice of conversion and an opportunity to respond, see id.; Massey v. Helman, 259 F.3d 641, 646 n.8 (7th Cir. 2001). The procedural oversight, assuming it exists, does not require reversal if there is nothing that Dr. Green could have submitted to the court that would have created a genuine issue of fact, see id., and that is the case here. The district court granted Dr. Green an evidentiary hearing and repeatedly allowed him to submit new evidentiary materials in support of his conspiracy claim. In our de novo review, we construe the evidence in the light most favorable to Dr. Green, drawing all reasonable inferences in his favor. Velasco v. Ill. Dep't of Human Servs., 246 F.3d 1010, 1016 (7th Cir. 2001).

To establish a claim for civil conspiracy under sec. 1985(3), a plaintiff must demonstrate (1) the existence of a conspiracy, (2) a purpose of depriving a person or class of persons of equal protection of the laws, (3) an act in furtherance of a conspiracy, and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens. Hernandez v. Joliet Police Dep't, 197 F.3d 256, 263 (7th Cir. 1999). The plaintiff

also must show some racial, or otherwise class-based, invidiously discriminatory animus behind the conspirators' actions, and that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment. Majeske v. Fraternal Order of Police, Local Lodge No. 7, 94 F.3d 307, 311 (7th Cir. 1996). To establish the existence of a conspiracy, a plaintiff must show that the conspirators agreed to inflict injury upon him; in other words, that they acted with a single plan, the general nature and scope of which was known to each conspirator. Hernandez, 197 F.3d at 263.

Agreement may be inferred from circumstantial evidence, but only if it is sufficient to permit a reasonable jury to conclude that a meeting of the minds had occurred and that the parties had an understanding to achieve the conspiracy's objectives. Id.

The record contains no evidence that anyone representing HCSC had any relationship or contact with anyone representing the DPR before or during the disciplinary proceedings, let alone specifically agreed to injure Dr. Green. Mr. Goodman's and Dr. Piening's affidavits are not evidence of a conspiracy; they do not mention HCSC and are limited to the affiants' observations about Dr. Piening's and Dr. Green's disciplinary hearings. Nor do the affidavits contain anything to suggest that the Illinois Defendants targeted Dr. Green based on his race. Similarly, Dr. Green's bare assertion that HCSC breached a legal duty to help him develop an immunity defense to the disciplinary proceedings, while being legally unsupportable, in no way suggests collusion with the DPR. Dr. Green cannot establish the existence of a conspiracy, and summary judgment was appropriate for that reason. Thus, we need not analyze the other shortcomings of his claim.

B. The Illinois Defendants

We do not reach the merits of Dr. Green's challenge to the

denial of his request for injunctive relief because we agree with the Illinois Defendants that the district court should have abstained under Younger v. Harris, 401 U.S. 37 (1971), and its progeny. The Younger abstention doctrine requires federal courts to abstain from enjoining ongoing state proceedings that are (1) judicial in nature, (2) implicate important state interests, and (3) offer an adequate opportunity for review of constitutional claims, (4) so long as no extraordinary circumstances exist which would make abstention inappropriate. Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 432, 436-37 (1982); Majors v. Engelbrecht, 149 F.3d 709, 711(7th Cir. 1998).

As an initial matter, we reject Dr. Green's argument on appeal that the DPR waived its Younger argument. We recognize that a state may waive Younger abstention, see Ohio Bureau of Employment Servs. v. Hodory, 431 U.S. 471, 477-80 (1977); Kendall-Jackson Winery, Ltd. v. Branson, 212 F.3d 995, 997 (7th Cir. 2000), but our review of the record reveals that in responding to Dr. Green's complaint and request for injunctive relief the Illinois Defendants repeatedly requested that the district court abstain under Younger.

The Younger factors all favor abstention. First, Dr. Green's state-court administrative review action, which plainly is judicial in nature, was pending when he filed this lawsuit. Whether the state action is still pending does not matter for our purposes, see Majors, 149 F.3d at 712, although as far as we know it is still pending.

Second, the DPR proceedings implicate important state interests in the regulation and licensing of mental healthcare professionals. See Majors, 149 F.3d at 713 ("That the regulation and licensing of healthcare professionals is an important matter of state concern is beyond dispute.").

Third, state-court administrative review of the DPR proceedings constitutes an adequate opportunity for Dr. Green to raise his due process and equal protection challenges. See

Ohio State Civil Rights Comm'n v. Dayton Christian Schs., Inc., 477 U.S. 619, 629 (1986).

This is because under Illinois law, Dr. Green could have brought these challenges along with his claim for administrative review. See Stykel v. City of Freeport, 742 N.E.2d 906, 914 (Ill. App. Ct. 2001); Nelson v. Murphy, 44 F.3d 497, 502 (7th Cir. 1995). It matters not whether Dr. Green actually presented these challenges in state court. "[W]hen a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that the state procedures will afford an adequate remedy." Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 15 (1987).

Finally, Dr. Green does not claim that any extraordinary circumstances exist that make abstention inappropriate. See Ramsden v. AgriBank, FCB, 214 F.3d 865, 871 (7th Cir.) (party claiming extraordinary circumstances must demonstrate their existence), cert. denied, 531 U.S. 1036 (2000).

The district court should have abstained, and the only remaining question is how--by dismissing or merely staying the action. A stay is appropriate when a plaintiff is foreclosed from bringing his damages claims in the state proceeding. See Majors, 149 F.3d at 714; Simpson v. Rowan, 73 F.3d 134, 138-39 (7th Cir. 1995). But here Dr. Green could have brought his claim for damages along with his claim for administrative review. See Stykel, 742 N.E.2d at 914; Nelson, 44 F.3d at 502. We thus conclude that dismissal, rather than a stay of the claims against the Illinois Defendants, was appropriate here.

Accordingly, the district court's decision is AFFIRMED as to Dr. Green's civil conspiracy claim against HCSC. The district court's order as to the Illinois Defendants is VACATED and this case is REMANDED with directions to dismiss under Younger v. Harris as to the Illinois Defendants. Dr. Green's Petition For Certification of State Law Question,filed on May 24, 2001, is DENIED as moot.

APPENDIX B1

In the United States District Court
For The Northern District of Illinois
Eastern Division

Judgement in a Civil Case
Case Number 99C6002
September 28, 2000

THEOPHILUS GREEN, et al
v.
Mary Anne Benden et al

Decision by Court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that HCSC's motion to dismiss the second amended complaint [41-1] is granted and Count IV is dismissed. IDPR, Benden and Palermo's motion to dismiss the second amended complaint [42-1] is granted and Count 1 and II are dismissed against the IDPR and Benden and Palermo in their official capacity. Judgement is entered in favor of Benden and Palermo, in their individual capacity on Counts 1 and II. Nania and Zweig's motion to dismiss the second amended complaint is granted and Count II is dismissed. Dr. Green's motion to reconsider our ruling, his motion for summary judgement [44-1] and his motion for sanctions 36-1 are denied. This case is terminated.

Michael W. Dobbins, Clerk of the Court

s/ Ttresa S. Abram, Deputy Clerk
Date: 9/28/2000

APPENDIX B2

In the United States District Court
For The Northern District of Illinois
Eastern Division

THEOPHILUS GREEN, ASSOCIATED PSYCHOLOGICAL SERVICES, PSYCHOLOGICAL SOLUTIONS, P.C. AND RELATED CLIENTS AND STAFF	)	
Plaintiffs	)	
vs.	)	No.99C6002
PROFESSIONAL REGULATION, DIRECTOR, WISCONSIN DEPARTMENT OF PROFESSIONAL REGULATION and JOHN ZWEIG, individually,	)	Judge Wayne Anderson
Defendants.	)	January 30, 2001

Order

This matter is currently before the court on the motion of defendant Health Care Service Corporation ("HCSC") and the Court sole complaint pending in this matter is plaintiff's Second Amended Complaint filed on April 26, 2000 as amended by plaintiff's "Motion for Substitution of Defendants."

Having considered and pending Plaintiff's motions for reconsideration and motions to vacate this court's September 28, 2000 Memorandum, Opinion and Order and all parties having appeared before the court on several occasions and having availed themselves of the opportunity to be heard on these matters, it is hereby ordered and adjudged that the findings of fact and determinations of law contained in this court's September 28, 2000 Memorandum, Opinion and Order with regard to the allegations and claims of plaintiff's

Second Amended Complaint as they pertain to HCSC are affirmed and hereby re-entered.

This court finds that there is no just reason for delay and hereby grants the motion by HCSC entitled "Health Care Service Corporations's (HCSC) Rule 54(b) Motion for Entry of a Final Judgement with Respect to Defendant HCSC". HCSC"s counter claim having previously dismissed without prejudice and with this Order, all claims, rights and liabilities asserted and/or brought by and between plaintiff and HCSC are hereby adjudicated. As such, this order terminates and dismisses with prejudice all causes of action brought and/or asserted by plaintiff against HCSC in this matter. The action by and between plaintiff and HCSC is terminated, final and appealable.

It is so ordered.

s/ Wayne R. Andersen.
United States District

Judge

Dated: January 30, 2001

APPENDIX B3

In the United States District Court
For The Northern District of Illinois
Eastern Division

THEOPHILUS GREEN, ASSOCIATED PSYCHOLOGICAL SERVICES, PSYCHOLOGICAL SOLUTIONS, P.C. AND RELATED CLIENTS AND STAFF	)	
Plaintiffs	)	
vs.	)	No.99C6002
PROFESSIONAL REGULATION, DIRECTOR, WISCONSIN DEPARTMENT OF PROFESSIONAL REGULATION and JOHN ZWEIG, individually,	)	Judge Wayne Anderson
Defendants.	)	January 30, 2001

Order

This matter is currently before the court on co-Defendant Health Care Service Corporation ("HCSC") motion for a Rule 54(b) Order and the Court permitting Defendant' Benden, Palermo, Zollar, Sherman and the Illinois Department of Professional Regulation (IDPR) to submit this additional Rule 54(b) order, with the sole complaint pending in this matter being plaintiff's Second Amended Complaint filed on April 26, 2000 as amended by plaintiff's "Motion for Substitution of Defendants." This Court having considered all pending motions by Plaintiff, including those for reconsideration of the denial of injunctive relief and to vacate the order of September, 28, 2000 and after hearings on said motions with all parties being present having the opportunity to be heard on all pending matters, it is hereby ordered and adjudged that the findings of fact and determinations of law

contained in this court's September 28, 2000 Memorandum, Opinion and Order with respect to Defendants IDPR, Benden, Palermo and Sherman, dismissing the Second Amended Complaint and denying Plaintiff's Motion for Reconsideration of the April, 2000 denial of injunctive relief, is affirmed and re-entered. This court thus terminates and dismisses with prejudice all causes of action brought or asserted by Plaintiff against Defendants IDPR, Benden, Palermo and Sherman and also terminates with prejudice all causes of action brought or asserted by Plaintiff against Defendant Zollar, who has been voluntarily dismissed from this action. The actions between plaintiff and Defendants IDPR, Benden, Palermo, Sherman and Zollar is hereby terminated, final and appealable.

It is so ordered.

s/ Wayne R. Andersen.
United States District Judge

Dated: January 30, 2001

Appendix B4

In the United States District Court
For The Northern District of Illinois
Eastern Division

THEOPHILUS GREEN, ASSOCIATED PSYCHOLOGICAL SERVICES, PSYCHOLOGICAL SOLUTIONS, P.C. AND RELATED CLIENTS AND STAFF	)	
Plaintiffs	)	
vs.	)	No.99C6002
	)	
PROFESSIONAL REGULATION, DIRECTOR, WISCONSIN DEPARTMENT OF PROFESSIONAL REGULATION and JOHN ZWEIG, individually,	)	Judge Wayne Anderson
Defendants.	)	June 1, 2001

Order

On September 28, 200, we entered a Memorandum Opinion and Order in this case. In that Opinion, we disposed of Dr. Green's claims against defendants Health Care Service Corporation ("HCSC"), the Illinois Department of Professional Responsibility (sic.) (IDPR), Benden, Palermo and Sherman. Those defendants then requested that this court enter Rule 54B judgments allowing their portion of this case to proceed to appeal. On January 31, 2001, we entered 54(b) judgements as to HCSC, IDPR, Benden, Palermo and Sherman. The Court of Appeals for the Seventh Circuit declined to take jurisdiction over IDPR, Benden, Palermo and Sherman, but is currently considering our judgment as it relates to HCSC.

We have considered Dr. Green's renewed motions to

vacate our original ruling, based on default and alleged evidence of conspiracy. We find nothing in his renewed motions that causes this court to reevaluate our original opinion entered on September 28, 2000. Therefore we deny Dr. Green's outstanding motions to reconsider and for the entry of default for the reasons stated in open court on April 26, 2001 and May 31, 2001. We hereby reaffirm our decision granting the motions to dismiss brought by IDPR and Benden, Palermo and Sherman in their official capacity. We also reaffirm our decision granting judgement in favor of Benden and Palermo in their individual capacity. We note that this court has granted Dr. Green had ample latitude to present evidence because of his pro se status.(sic.)

Dr. Green has informed this Court that he cannot proceed against the remaining Wisconsin defendants until the conclusion of his appeal. Therefore, we grant his request and stay the proceedings against the Wisconsin defendants. A status hearing is scheduled for December 4, 2001. Because Dr. Green has advised this court that he cannot proceed with respect to the Wisconsin defendants until his appeal is concluded, there is no further action that this court can take with respect to this case.

We direct the entry of a Fed. R. Civ. P. 54(b) final judgement as to IDPR, Benden, Palermo and Sherman. This judgement is final and appealable and there is no just reason for delay in the consideration of this appeal. Dr. Green's remaining motions (110-)(111-1)(112-1)(113-1) are denied for the reasons stated in open court. Status hearing schedule for 9.am. On December 4, 2001. All other dates are hereby vacated.

Minute Order Form (06/97) Docketed June 4, 2001.

APPENDIX C

United States Court Of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
March 21, 2002
Before
Hon. Thomas E. Fairchild, Circuit Judge
Hon. Diane P. Wood, Circuit Judge
Hon. Ann Claire Williams, Circuit Judge
Nos. 01-1328, &01-2399

Theophilus Green,
Plaintiff-appellant,

Mary A. Benden, et al.,
Defendants-Appellees.

Appeals from the United States District Court for the Northern District Of Illinois, Eastern Division
No. 99C6002
Wayne R. Andersen, Judge.

AMENDED ORDER

On consideration of the petition for rehearing and rehearing en banc filed by counsel for the Plaintiff-Appellant Theophilus Green on March 4, 2002, all members of the original panel have voted to DENY the petition for rehearing. No judge in regular active service requested a vote on the petition for rehearing en banc.(Judge Kenneth F. Ripple did not participate in the consideration of this matter.)

Accordingly, the petition for rehearing is DENIED.

APPENDIX D

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

THEOPHILUS GREEN,	)	
Plaintiff -appellant,	)	
v.	)	No. 01-00-1118
Illinois Department of Professional	)	
Regulation, etc.,	)	
Defendant-appellee	)	

Order

This matter comes to be heard o the Court's own motion. It appearing to the court that the appellant's brief was due to be filed on November 09, 2000, but same has not been filed;

IT IS HEREBY ORDERED that the instant appeal be and the same is hereby dismissed for want of prosecution.

DATED at Chicago, Illinois, this 17 Day of January, 2001

Order Entered

January 17, 2001

Appellate Court, First District

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s/

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s/ William Cousins

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s/ Margaret S. McBride

APPENDIX E

FEDERAL RULES OF CIVIL PROCEDURE

Federal Rules of Civil Procedure, Rules 1, 8(a),(d), 11,12a, 54c, 55a,60b,79a.

Rule 1. SCOPE OF RULES- ONE FORM OF ACTION

1. Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 8. General Rules of pleading.

(a) **Claims of Relief.** A pleading which sets forth a claim for relief, whether, an original claim, counter-claim, cross-claim, or third party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds or jurisdiction to support, (2) a short and plain statement of the claim showing that the pleader is entitled to relief and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(d) **Effect of a Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the mount of damage, are admitted when not denied in the responsive pleading.

Rule 11 Signing of pleadings, Motions and other papers,

Representations to Court; Sanctions

(b) **Representations to Court.** By presenting to the court, whether by signing, filing, submitting or later advocations, a pleading, written motion or other papers, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and relief after an inquiry reasonable under the circumstances,--

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discover .....

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b)or are responsible for the violations.

Rule 12. Defensives and objections, When and How presented– by Pleading or Motion

(a) When Presented

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint.

(B)(2)...if a reply is ordered by the court, within 20 days, after service of the order, unless the order otherwise directions.

(H) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the

circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule or included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of court.

Rule 54 (c) Demand for judgement. A judgement by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgement shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

Rule 55 Default

(a) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to affidavit or otherwise, the clerk shall enter the party's default.

(b) **Judgment.** Judgement by default may be entered as follows (2) By the Court. ....the party entitled to a judgement by default shall apply to the court therefor;... If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application.

Rule 60. Relief from judgement or order

(A) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the records and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative, or on the motion of any party and after such notice, if any as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and

thereafter, while the appeal is pending may be so corrected with leave of the appellate court.

(B) Mistakes; Inadvertence, excusable Neglect; Newly Discovered Evidence; Fraud, et. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgement, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;.... the motion shall be made within a reasonable time,....not more than one year after the judgment, order or proceeding was entered or taken.

Rule 79. Books and Records Kept by the Clerk and Entries therein.

(a) Civil Docket. The clerk shall keep a book known as "civil docket".... All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts and judgments shall be entered chronologically in the civil docket on the folio assign to the action and shall be marked with its file number. These entries shall be brief, but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing executive of process. The entry of an order or judgment shall show the date the entry is made.

(b) Civil judgments and Orders. The clerk shall keep in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

DOCKET SUMMARY

4/26/00 39 MINUTE ORDER of 4/26/00 by Hon. Wayne R. Andersen : Status hearing held. Plaintiff's motion for leave to file second amended complaint is granted [38-1]. Defendants to

file a response to the second amended complaint by 5/16/00. Plaintiff's oral motion to reconsider ruling on preliminary injunction is taken under advisement. Status hearing set for 6/1/00 at 8:00 a.m. No notice (tw)

[Entry date 04/27/00]

4/26/00 -- SUMMONS issued two originals and two copies as to Kimberly Nania and John Zweig (tw) [Entry date 04/27/00]

5/10/00 40 MEMORANDUM of law by defendants Mary Ann Benden, Michael Palermo and IL Dept of Prof in support of dismissal of plaintiff's second amended complaint [6-1]; Notice (tw) [Entry date 05/12/00] [Edit date 05/12/00]

5/10/00 41 MEMORANDUM by defendant/counter-claimant Hlth Care Svc Corp in support of its motion to dismiss plaintiff's complaint with prejudice [32-1] or in the alternative, summary judgment (Attachments) (tw) [Entry date 05/12/00]

5/10/00 42 MEMORANDUM by defendants Mary Ann Benden, Michael Palermo and IL Dept of Prof in opposition to plaintiff's second amended complaint with memorandum in support of abstention;

Notice (tw) [Entry date 05/12/00]

5/10/00 42 MEMORANDUM by defendants Mary Ann

Benden, Michael Palermo and IL Dept of Prof in support of abstention with

memorandum of law in opposition to plaintiff's second

amended complaint; Notice (tw) [Entry date 05/12/00]

5/10/00 43 MEMORANDUM of law by defendants Mary Ann Benden, Michael Palermo and IL Dept of Prof in opposition to plaintiff's motion for reconsideration with response; Notice (tw)

[Entry date 05/12/00]

5/10/00 43 RESPONSE by defendants Mary Ann Benden, Michael Palermo IL Dept of Prof to plaintiff's motion for reconsideration with memorandum of law in opposition; Notice (tw)

[Entry date 05/12/00]

5/16/00 44 RESPONSE by plaintiffs to defendant's motion to dismiss plaintiff's complaint with prejudice [32-1] or, in the

alternative summary judgment (tw) [Entry date 05/17/00]

5/22/00 45 RESPONSE by plaintiff/counter-defendant Theophilus Green to various defendant memorandums; Notice (tw)

[Entry date 05/23/00]

6/16/00 48 MINUTE ORDER of 6/16/00 by Hon. Wayne R. Andersen : We converting the motion to dismiss brought by the Illinois Department of Professional Regulation, Mary Anne Benden and Michael Palermo into a motion for summary judgment. The

parties have been offered the opportunity to submit supplementary materials. The defendants shall submit their

materials by 6/27/00. Dr. Green has declined to submit materials or respond to the defendants' submissions. Ruling set for 9:00 a.m. on 7/11/00. (See reverse of minute order.) Mailed notice (gk) [Entry date 06/19/00].

[Edit date 06/19/00]

9/28/00 63 MINUTE ORDER of 9/28/00 by Hon. Wayne R. Andersen: HCSC's motion to dismiss [41-1] is granted and Count IV is dismissed. IDPR, Benden and Palermos' motion to dismiss [42-1] is granted and Counts I and II are dismissed against the IDPR and Benden and Palermo in their official capacity.

Judgment is entered in favor of Benden and Palermo, in their individual capacity, on Counts I and II. Nania and Zwieg's motion to dismiss the second amended complaint is granted and Count III is dismissed. Dr Green's motion to reconsider our ruling, his motion for summary judgment [44-1] and his motion for sanctions [36-1] are denied.

Entered Memorandum Opinion and Order. terminating case

Mailed notice (vj) [Entry date 09/29/00]

12/4/00 78 COMPOUND MOTION by plaintiff for HCSC default judgment and supportive arguments in favor of default judgment and legal fees (Attachments); Notice (ip) [Entry date 12/05/00]

12/4/00 79 MINUTE ORDER of 12/4/00 by Hon. Wayne R. Andersen: Health Care Service's oral motion to voluntarily dismiss its counterclaim without prejudice is granted.

12/11/00 82 RESPONSE by defendant Hlth Care Svc Corp in opposition to "plaintiff's compound motion for HCSC default judgment [78-1] and supportive arguments in favor of default judgment and legal fees [78-2]" (ip) [Entry date

12/12/00]

12/13/00 84 MOTION by defendant Hlth Care Svc Corp for entry of a final judgment with respect to defendant HCSC ; Notice (ip)

[Entry date 12/21/00]

12/18/00 83 JUDICIAL NOTICE by plaintiff of related opinion by Illinois State Court [80-1]; Notice (ip) [Entry date 12/19/00]

12/27/00 87 MOTION by plaintiff for default judgment against all defendants excepting Zweig and WDRL ; Notice (ip)

[Entry date 01/10/01]

1/9/01 91 MINUTE ORDER of 1/9/01 by Hon. Wayne R. Andersen: Plaintiff's motions for substitution of defendants Nikki Zollar and Kimberly Nania [88-1], for default judgment against all defendants except Zweig and WDRL [87-1] and for sanctions against Chris Sullivan [89-1] are entered and continued 1/11/01 at 10:30 a.m. No notice (ip)

[Entry date 01/10/01]

1/19/01 99 MOTION by plaintiffs for expeditious selection of special master or in the alternative to reinstate motion for recusal; Notice. (cs) [Entry date 02/06/01]

1/30/01 100 MINUTE ORDER of 1/30/01 by Hon. Wayne R. Andersen: Plaintiff's motion for expeditious selection of special master [99-1] or, in the alternative, to reinstate motion for recusal [99-2] is denied.

1/31/01 97 MINUTE ORDER of 1/31/01 by Hon. Wayne R. Andersen: The Court having considered all pending motions by plaintiff and after hearings on said motions with parties being present having the opportunity to be heard on

all pending matters, it is hereby ordered and adjudged that the findings of fact and conclusions of law contained in this Court's 9/29/00 Memorandum, Opinion and Order, with respect to defendants IDPR, Benden, Palermo and Sherman, dismissing the second amended complaint and denying plaintiff's motion for reconsideration of the April, 2000 denial of injunctive relief, is affirmed and re-entered. The action between plaintiff and defendants IDPR, Benden, Palermo, Sherman and Zollar is hereby terminated, final and appealable. It is so ordered. (Entered Order.) Mailed notice (kf) [Entry date 02/05/01]

1/31/01 98 MINUTE ORDER of 1/31/01 by Hon. Wayne R. Andersen: The Court having considered plaintiff's motions for re-consideration and motions to vacate this court's 9/28/00 Memorandum, Opinion and Order and all parties having appeared before the Court on several occasions and having availed themselves of the opportunity to be heard on these matters, it is hereby ordered and adjudged that the findings of fact and determinations of law contained in this court's 9/28/00 Memorandum, Opinion and Order, with regard to the allegations and claims of plaintiff's second amended complaint as they pertain to HCSC, are affirmed and hereby re-entered. The action by and between plaintiff and HCSC is terminated, final and appealable. (Entered Order.)

6/1/01 117 MINUTE ORDER of 6/1/01 by Hon. Wayne R. Andersen: We direct the entry of a Fed.R.Civ.P.54(b) final judgment as to IDPR, Benden, Palermo and Sherman. This judgment is final and appealable and there is no just reason for delay in the consideration of the this appeal. Dr. Green's remaining motions [110-1][111-][112-1][113-1] are denied for the reasons stated in open court..